



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,169	03/08/2001	Christopher Keith	IVEN125473	1150

52531 7590 11/02/2006

CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

EXAMINER

GRAHAM, CLEMENT B

ART UNIT PAPER NUMBER

3692

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/802,169

Applicant(s)

KEITH, CHRISTOPHER

Examiner

Clement B. Graham

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-31 remained pending.

Claim Rejections - 35 USC § 112

2. The term "crowd" in claims 3-5, is a relative term which renders the claim indefinite. The term "crowd" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention...". For further examination, the examiner interprets the limitation in light of this 112, second rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-30, are rejected under 35 U.S.C. 102(e) as being anticipated by Hambrecht et al (Hereinafter Hambrecht U.S Patent No. 6, 629, 082).

As per claim 1, Hambrecht discloses a method of facilitating trading, comprising: automatically via a computer providing a price inquiry to a market process having an order file, the market process also having a crowd of trading process registered therewith and automatically via a computer requesting that the market process notify its crowd of a price improvement opportunity.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 2, Hambrecht discloses further comprising trading at a price provided by the Crowd. .(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 3, Hambrecht discloses wherein the automatically providing and requesting are performed by a trading process. (see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 4, Hambrecht discloses a method of providing a crowd price, comprising:
automatically via a computer receiving notice at a trading process registered(i. e, "member dealers") as being a crowd of market process of an opportunity to improve upon a book price, automatically via a computer or other computer determining whether to improve upon the book price, and automatically via a computer or another computer providing the crowd price that improves the book price when the determination is positive.(Note abstract and see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 5, Hambrecht discloses wherein the determining is in accordance with an order processing methodology.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 6, Hambrecht discloses wherein the order processing methodology is represented in a decision table.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 7 Hambrecht discloses wherein the determining includes requesting an instruction from a user. (see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 8, Hambrecht discloses further comprising automatically registering as part of a crowd to receive the price improvement opportunity notice. .(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 9, Hambrecht discloses wherein the automatically registering occurs with a market process.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 10, Hambrecht discloses wherein the automatically receiving notice, determining and providing a crowd price are performed by a trading process.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 11, Hambrecht discloses a method of providing a crowd price, comprising: automatically via a computer receiving notice at a trading process registered as being the crowd of market process of a proposed pairing price, automatically via a computer or another computer determining whether to improve upon the proposed pairing price, and automatically via a computer or another computer providing a crowd price that improves the proposed pairing price when the determination is positive.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 12, Hambrecht discloses wherein the determining is in accordance with an order processing methodology.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 13, Hambrecht discloses wherein the order processing methodology is represented in a decision table.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 14, Hambrecht discloses wherein the determining includes requesting an instruction from a user.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 15, Hambrecht discloses further comprising automatically registering as part of a crowd to receive the proposed pairing price notice.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 16, Hambrecht discloses wherein the automatically registering occurs with a market process.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 17, Hambrecht discloses wherein the automatically receiving notice, determining and providing a crowd price are performed by a trading process.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 18, Hambrecht discloses a method of providing price discovery, comprising:
automatically via a computer notifying a crowd of trading process registered with a market process of an opportunity to improve upon a book price, automatically via a

Art Unit: 3692

computer or another computer receiving a crowd price from the crowd, and automatically via a computer or another computer providing the crowd price as a response when the crowd price is better than the book price.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 19, Hambrecht discloses wherein the automatically providing occurs in response to a price inquiry according to a published delay time. (Note abstract and see column 3 lines 50-65 and column 4 lines 5-40).

As per claim 20, Hambrecht discloses wherein when the crowd price is provided as a response, a pairing must occur.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 21, Hambrecht discloses comprising receiving a price inquiry specifying that the response to the price inquiry should occur after automatically notifying the crowd of the price improvement opportunity.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 22, Hambrecht discloses wherein the automatically notifying, receiving and providing are performed by a market process .(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 23, Hambrecht discloses wherein the crowd comprises registered trading processes.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 24, Hambrecht discloses a comprising: automatically via a computer notifying a crowd of trading process registered with a market process of a proposed pairing price, automatically via a computer or another computer receiving a crowd price from a crowd and automatically via a computer or other computer pairing with the crowd price when the crowd price is better than the proposed pairing price.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 25, Hambrecht discloses wherein the automatically pairing occurs according to a published delay time.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 26, Hambrecht discloses wherein the published delay time is less than one second.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 27, Hambrecht discloses wherein the published delay time is greater than one second.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 28, Hambrecht discloses further comprising determining that a next pairing will be at the proposed pairing price different than a previous pairing price.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 29, Hambrecht discloses wherein the proposed pairing price is the best price from a file of stored orders.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

As per claim 30, Hambrecht discloses wherein the automatically notifying, receiving and pairing are performed by a market process.(see column 11 lines 35-67 and column 12 lines 1-65 and column 13 lines 1-14).

Response to Arguments

5. Applicant's arguments files on 7/31/06 have been fully considered but they are not persuasive for the following reasons.

6. The Examiner apologize for the typical error of indicating claims 1-5, in the 35 USC § 112 rejection which was intended to be claims 1 and 5, because 3 and 5 do not have a crowd.

7. In response to applicant's argument that Fig 1 of Applicant's specification discloses "discover request, order book and order file" these are all specific terms and a crowd is not a specific term because by definition a crowd is a large number of persons collected together or a crowd is physical and is not a network therefore one of ordinary skill in the art would be unable to ascertain a crowd associating with a computer

8. In response to applicant's argument that the second element of claim1, the prior art of references fail to show certain features of applicant's invention, recited in the claims it is noted that the features upon which applicant relies (i.e., The Indication that

Art Unit: 3692

OE 10 Accepts Auction Mode") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Clement Graham at (703) 305-1874. The examiner can normally be reached on Monday, Tuesday, and Wednesday from 5:30AM. to 6:00PM.


9. If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Sam Hyung can be reached on (703) 305-0505.

The Official Fax Number for TC-3600 is: (703) 305-7687

Clement Graham

Patent Examiner

Oct 17, 2006


FRANTZY POINVIL
PRIMARY EXAMINER
AU 3692